

**RULES  
OF  
THE DEPARTMENT GENERAL SERVICES-0690  
DIVISION OF PURCHASING**

**CHAPTER 0690-3-2  
PURCHASE OF MATERIALS, SUPPLIES, EQUIPMENT AND SERVICES  
LIMITATIONS OF LIABILITY**

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**0690-3-2-.01 POLICY STATEMENT AND SCOPE OF RULES.**

- (1) The General Assembly of Tennessee, in T.C.A. § 12-3-315, authorized the Department of General Services to promulgate rules setting forth the circumstances when, and the procedures under which, the State would purchase materials, supplies, equipment and services while accepting limitations of the liability of contractors for damage claims.
- (2) T.C.A. § 12-3-315 forbids the State from accepting any limitation of the contractor's liability for intentional torts, criminal acts, or fraudulent conduct. The statute also forbids the State from accepting any limitation of liability for an amount less than two times the value of the contract. Furthermore, neither the statute nor these regulations authorize the State to indemnify contractors for the acts or negligence of the contractors or third parties. All limitations of liability authorized under these rules must be subject to these limitations.
- (3) These rules shall apply to contracts for the purchase of materials, supplies, equipment and services that are procured pursuant to the Rules of the Department of General Services, Chapter 0690-3-1, when the Department has demonstrated that such materials, supplies, equipment and services cannot be secured without limiting the liability of contractors.

**Authority:** T.C.A. §§4-5-202, 12-3-101 et seq., and 12-3-315. **Administrative History:** Original rule filed January 24, 2003; effective May 30, 2003.

**0690-3-2-.02 APPROVAL FOR LIMITATION OF LIABILITY.**

- (1) Approval Timeliness.
  - (a) Any request to permit the limitation of contractor liability in a state contract for materials, supplies, equipment and services must be made, and a decision made thereon, at the appropriate time in the procurement process to ensure that no such decision shall detrimentally impact the fairness of the procurement or the interests of the State in competitive procurements.
  - (b) In the formal Invitation to Bid process, the Purchasing Division may determine to request approval for a limitation of liability after receiving written comments from potential bidders pursuant to the process. In which case, the request to limit liability shall be made reviewed, a decision shall be rendered, and an amended Invitation to Bid shall be issued. (and a copy of any such approval shall be presented with this request).
  - (c) The Purchasing Division may request, and the Commissioner of General Services may authorize, initiation of a new Invitation to Bid including a contractor's limitation of liability at

(Rule 0690-3-2-.02, continued)

any stage of the procurement process, in circumstances where the applicable procurement process has failed to provide qualified proposers a responsive bid.

(2) Approval Process.

- (a) If the Purchasing Division considers it necessary to accept a limitation of liability, it shall submit a request to use a limitation of liability clause to the Commissioner of General Services.
- (b) The request to use a limitation of liability shall be submitted under the signature of the Director of Purchasing. The request for approval shall contain justification that addresses the following:
  - 1. the text of the limitation of liability sought to be used;
  - 2. the risks of liability to the State created by the information technology services product purchased under the contract, and the impact on the State by allowing a limitation;
  - 3. the conditions in the market which justify a limitation of liability; and
  - 4. the anticipated impact on the State's procurement if limitation of liability is not allowed.
  - 5. the identification of one or more persons in the purchasing division familiar with the information set forth in the request to permit a limitation of liability.
- (c) The request will be approved or disapproved by the Commissioner of General Services or authorized designee. The Commissioner may approve the language submitted or may authorize acceptance of limitation of liability under alternative language. Any approval will be in writing and detail the specific limitation of liability approved.

(3) Approval Documentation.

- (a) Said written approval permitting a limitation of liability shall be filed with the Board of Standards. The written approval shall be presented along with the subject purchasing documents submitted to the Commissioner of General Services.

**Authority:** T.C.A. §§4-5-202, 12-3-101 et seq., and 12-3-315. **Administrative History:** Original rule filed January 24, 2003; effective May 30, 2003.